The Court of Appeal has confirmed that properly drafted standstill agreements can be used, resolving concerns raised by the High Court decision in Cowan v Foreman & Ors [2019] EWHC (“the Case”) earlier this year.

Standstill agreements are used by litigants to suspend or extend limitation periods. This gives parties additional time to investigate the merits of a case, fulfill pre-action protocol requirements or to attempt alternative forms of dispute resolution without having to first issue protective court proceedings. Standstill agreements can reduce the cost and risk exposure to all parties to a claim and they are therefore widely used in appropriate circumstances.

The Case arises from an application under the Inheritance (Provision for Family and Dependants) Act 1975, (‘Inheritance Act’) for permission to make an application under that Act. Section 4 provides that after the expiry of the relevant statutory limitation period, the relevant application can only be made with the permission of the court. The parties entered into a standstill agreement and ultimately the application was issued without the court’s permission, after the statutory limitation period had expired.

Whilst the standstill agreement in this claim was deemed effective, Mr Justice Mostyn criticised the efficacy of standstill agreements generally. He commented “it is not for the parties to give away time that belongs to the court” and suggested “it is a practice that should come to an immediate end”. This led to understandable concern that any standstill agreements may not be effective. As a result, Claimants and their lawyers were reluctant to enter into any Standstill Agreement, preferring instead to issue protective proceedings.

The Court of Appeal’s View

On appeal, Lord Justice Asplin held “the Judge was plainly wrong to come to the conclusion he did”. Regarding standstill agreements, Lord Asplin confirmed whilst the power to extend limitation belongs to the court, “without prejudice negotiations rather than the issue of proceedings should be encouraged”.

Lord Asplin rightly highlighted that parties relying on standstill agreements will do so at their own risk, but also noted “if an application is made subsequently to extend time in circumstances where negotiations have failed, if both parties have been legally represented, it seems to me that it would be unlikely that the court would refuse to endorse the approach”.

In addition, Lady Justice King warned that whilst there is in fact a place for standstill agreements, careful drafting is paramount, commenting “there should be clear written agreement setting out the terms/duration of such an
agreement and each of the potential parties should be included in the agreement”.

Commentary

The preferred route by the court remains that, ordinarily, proceedings should be issued within the limitation period relevant to the particular claim and, if the parties are conducting negotiations, an agreed application for an adjournment is made to the court at the earliest opportunity.

This view is not exclusive to applications made under the Inheritance Act. For example, in the earlier case of Russell and another v Stone (t/a PSP Consultants) and others [2017] EWHC 1555 (TCC), (‘Russell v Stone’), held in the Technology and Construction Court, the judge said that rather than a standstill agreement, a better course of action may have been to commence proceedings and then seek a stay in order to follow and complete the pre-action protocol process.

Whist standstill agreements may still be regarded as a last resort, they present an appropriate option in certain circumstances. Despite this, the Case cautions the risks that come with these agreements and stresses the importance of carefully considered legal drafting. Expert legal advice is therefore essential to ensure standstill agreements are entered into appropriately and to ensure the terms are effectively drafted.

For further information please contact:

David McArdle
Partner
+44 (0) 117 428 9306
d.mcardle@beale-law.com

Thomas Adamson
Solicitor
+44 (0) 117 428 9322
t.adamson@beale-law.com